Supreme Court, U.S.
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In The Supreme Court of the United States

JOEL D. JOSEPH,

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the procedure for review of essay exam answers for the California bar exam (solely by review by direct petition to the California Supreme Court) provides applicants for admission with due process of law under the Constitution of the United States?

2. Whether the State Bar of California is required by the Constitution of the United States to establish a system for hearing appeals of claims of inaccurate and unfair grading of essay exams administered for admission to the State Bar of California?

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STATUTES and CONSTITUTIONAL PROVISIONS:

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Opinions Below

The Superior Court of Los Angeles issued an opinion on October 27, 2009. App. 20. The Court of Appeal of California, Second Appellate District, Division Two, issued an opinion on September 15, 2010. App. 13. The California Supreme Court denied review on December 15, 2010.

Jurisdiction

Jurisdiction is based on 28 U.S.C. §1257 for review of judgment of the highest court of a State.

Statutory Provision Involved

There are no statutory provisions involved.

Statement of the Case

Petitioner Joseph is an attorney who has been practicing law for 36 years on the East Coast. Petitioner graduated from Georgetown University Law Center, taught law at George Washington University and is the author of ten books and scores of articles on law. All these facts were alleged in his complaint.

In February, 2009, Joseph took the California Bar Examination and received a failing grade. He requested that the State Bar reread his examination, but his request was denied. The State Bar also failed to provide petitioner with an opportunity to review the notes of the graders. [Facts in this paragraph are taken from the opinion of the Court of Appeal.]

Petitioner graduated from Georgetown law school in 1973 and passed the bar examination in the District of Columbia on his first attempt. That examination included the multistate bar examination. Petitioner passed the lawyer's bar examination in Maryland in 1981 on his first attempt. That examination was a true lawyer's examination, focusing on the differences between Maryland practice and practice in general, emphasizing procedure. Complaint ¶¶3-5.

Petitioner received a score of 1,385 on the California Bar. Complaint, ¶ 29. A score of 1,390 is needed for a second read of the essays. Complaint, ¶ 31. Petitioner requested that the Board of Governors of the Bar reconsider his grade on the essay portions of the exam, but was denied. ¶33, J.A. 4. Petitioner requested copies of the notes of the grader of his exam, but was denied. Opinion of the Court of Appeal.

California law requires the State Bar to provide notes of the grader. California Business and Professions Code Section 6065(a)(2).

The California Supreme Court has only once granted review to an applicant for admission to review the grading of the bar examination. Petitioner has been able to identify only one case in which the Supreme Court took any action on a Petition for a Writ of Mandate concerning review of the bar exam. *Sewell v. Committee of Bar Examiners*, 154 Cal. App. 3d 256 (Court of Appeal, First Appellate District, Division Four, 1984).

Reasons for Granting the Writ

This court should grant review of this case because it is necessary to secure uniformity of decisions regarding admission to the bar and to settle important questions of law.

For many years California has failed a large number of experienced out-of-state attorneys, failing a much higher percentage of experienced attorneys than newly minted law graduates. In the past five years California has failed more than 2,000 experienced attorneys from other jurisdictions. http://admissions.calbar.ca.gov/Examinations/ statistics.aspx.

California, unlike many other states, has only one grader for each essay exam. In addition, California pays only $3 to have each essay question graded. At the same time, California has no system for review of grades on these essays, other than direct review with the Supreme Court of California.

Justice Goldberg, joined by Justices Brennan and Stewart, concurring in *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963), stated: ***"Certainly lawyers and courts should be particularly sensitive of, and have a special obligation to respect, the demands of due process."*** 373 U.S. at 106. (Emphasis added).

Petitioner asks this court to grant this petition for certiorari in order to provide applicants to the bar with due process regarding grading of the exams, by providing a review process to determine if essays were properly graded.

The Decision Below Conflicts With Decisions of This Court

A. The Court Should Grant Review to Establish Uniformity of Decision and Process to Provide Applicants to the Bar with Fairness and Due Process in the Review of the Bar Exam Essays.

The practice of law is a right which is protected by the Constitution of the United States. It is a right which the United States Supreme Court has deemed fundamental. See *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 281, (1985) 105 S.Ct. 1272, 1277, 84 L.Ed.2d 205, 211. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment" *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-239 (1957).

The California Supreme Court has rarely granted a petition for a writ reviewing the grading of the bar exam. *See Sewell v. Committee of Bar Examiners, supra.* Requiring applicants to file directly with the Supreme Court, when such review is not generally available is a Catch 22, depriving applicants of due process of law.

In contrast, the California Supreme Court has established a State Bar Court for hearings concerning the discipline of attorneys. California Rules of Court §9.10. There is also a procedure for appeals from decisions of the State Bar Court concerning

discipline of attorneys. California Rules of Court §9.12.

Petitioner never has had his day in court or before an administrative panel. That is what Petitioner seeks. He wants, and is entitled to by the Constitution of the United States, a due process hearing to determine if he passed or failed the exam. The record now is blank. Petitioner was given a number, a score, with no notes as required by California law. The bar exam graders were paid $3 per essay exam, or a total of approximately $24 to grade an exam that Petitioner paid $1,000 for the privilege of taking. ¶37, J.A. 4.

Petitioner is entitled to a due process hearing under the Constitution of the United States to demonstrate that he did indeed pass the bar exam.

B. The Petitioner Has Been Denied the Right to Procedural Due Process under the U.S. Constitution.

How much due process did Petitioner get for the $24 that the California Bar paid to review the essays he wrote for the bar exam? His exam essays, allegedly, were read once. We don't even know if anyone actually read them. We don't have the notes of the grader, required to be produced under California Business and Professions Code Section 6065 (a)(2), or any other evidence that would demonstrate that the essays were actually read.

Most states have two graders for each essay question. *See e.g., In re Obermeyer*, 717 P.2d 382, 385 (Supreme Court of Alaska, 1986); *The Florida Bar re Williams*, 718 So. 2d 773 (Supreme Court of

Florida, 1998). Missouri uses two graders for each essay. *Bar Examiner*, Nov. 2004 at 6.

Having two graders for essay exams is the standard used in education. For the Scholastic Aptitude Test (SAT) used by most colleges in the United States, all essays are read by two readers. *Washington Post*, August 1, 2005, "SAT Grader Next Door." *The Handbook on Test Development,* University of Wisconsin, provides as section 9, "Ideally, there should be two graders for each item. Any disagreement between these two must be resolved by a third grader." www.testing. wisc. edu/handbook.

Many states have a review process for administrative review of essay exam grading. *See e.g. Hooban v. Bd. of Governors of Wash. State Bar Assn.*, 85 Wn.2d 774 (Supreme Court of Washington, 1975); *McGinn v. State Bar Board Of the State Of North Dakota,* 399 N.W.2d 864 (Supreme Court of North Dakota, 1987); *Fruchtman v. New York State Bd. of Law Examiners,* 534 F. Supp. 692 (S.D.N.Y. 1982).

In *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963), the United States Supreme Court ruled that a state bar must afford an applicant a hearing before denying him admission. The court ruled:

> New York does not appear to have any procedure whereby an applicant for admission . . . that gives him a hearing prior to the court's adverse action. . . . the requirements of procedural due process must be met before a State can

> exclude a person from practicing law. 373 U.S. at 99, 102.

California, like New York in the *Willner* case, has no procedure for granting an applicant a hearing concerning his bar exam. California does have a statute that requires the California Bar to provide unsuccessful applicants with notes of the grader. California Business and Professions §6065 (a)(2). Petitioner wrote to the bar requesting those notes. But the California Bar has refused to comply with the law by refusing to provide Petitioner an opportunity to review the notes of the graders.

To comply with the Due Process Clause of the 14th Amendment, the California State Bar must:

> 1. Provide petitioner with the notes of the grader of his exam; and
>
> 2. Provide an opportunity to prove that applicant earned a higher grade.

That Petitioner has the right to file a petition with the California Supreme Court does not comply with the Due Process requirements of the U.S. Constitution. The California Supreme Court routinely denies these petitions and has only once, to counsel's knowledge, in 160 years, granted a petition to review an applicant's essay examinations.

There is also a presumption of a remedy for every violation of law or of the Constitution. *Marbury v. Madison,* 1 Cranch (5 U.S.) 137 (1801). In *Marbury,* the United States Supreme Court ruled:

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." 5 U.S. at 163. The Supreme Court continued:

> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right 5 U.S. at 163.

A remedy in the California Supreme Court is a remedy in theory only, for in reality, the California Supreme Court rarely hears individual cases challenging the grading of the bar exam. Due process requires that petitioner be given the notes of his grader so that there is a record that can be reviewed. Under *Willner, supra*, Petitioner is then entitled to a hearing, a day in court, to prove that he is qualified to be a member of the Bar of California.

Conclusion

The bar applicant in the *Willner* case was entitled to a hearing concerning his moral character to practice law. This same principle should apply to the bar examination. Applicants to the bar should be entitled under the same due process principles to review how their grade was determined. Petitioner could prove that he passed the bar exam, but was graded unfairly. For example, in the exam Petitioner "failed," one question was a federal venue question. Petitioner not only answered the question accurately, he cited 28 U.S.C § 1404, the appropriate statute. The Bar's sample answer did not meet petitioner's standard. Yet the Bar failed petitioner on this question because he gave a scholarly answer, when the Bar was seeking a sophomoric response.

California passes a much higher percentage of recent law students than experienced attorneys. This is contrary to reason. Experienced attorneys should have a much higher passing rate since they have already passed the bar in another jurisdiction and are more experienced at practicing law.

For example, Kathleen Sullivan, former dean of the Stanford University Law School, failed the California bar exam in 2005. "Raising the Bar: Even Top Lawyers Fail California Bar," *Wall Street Journal*, December 5, 2005, A1.

Like Professor Sullivan, petitioner taught law at a major law school (George Washington University) and authored ten books on law including *Black Mondays: Worst Decisions of the Supreme Court,*

National Press Books, Bethesda, MD. (1987) [Justice Thurgood Marshall wrote the foreword.]

All lawyers taking the bar should have the right to due process to make sure that their essay exams were graded accurately and fairly. Under *Willner, supra*, due process of law should apply to the bar exam as well as character and fitness test. For all of these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix

Supreme Court of California

JOEL D. JOSEPH

v. Case Number S187502

STATE BAR

ORDER

The Petition for review is denied.

Clerk

December 15, 2010

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

JOEL D. JOSEPH, Plaintiff and Appellant, v. STATE BAR OF CALIFORNIA, Defendant and Respondent.	B221236 (Los Angeles County Super. Ct. No. SC103749)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Norman Perry Tarle, Judge. Affirmed.

Joel D. Joseph, in pro. per., for Plaintiff and Appellant.

Kerr & Wagstaffe, Michael von Loewenfeldt, Daniel A. Zaheer; State Bar of California Office of General Counsel, Lawrence C. Yee, Richard J. Zanassi, and Rachel Grunberg for Defendant and Respondent.

Plaintiff and appellant Joel D. Joseph (Joseph) appeals from a judgment entered after the trial court sustained without leave to amend the demurrer of defendant and respondent State Bar of California (the State Bar). Because the trial court rightly held that it does not have jurisdiction over Joseph's claims, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

"Because this matter comes to us on demurrer, we take the facts from plaintiff's complaint, the allegations of which are deemed true for the limited purpose of determining whether the plaintiff has stated a viable cause of action. [Citation.]" (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

Joseph is an attorney who has been practicing law for 36 years on the East Coast.[1] In February 2009, he took the California Bar Examination[2] and received a failing grade. He requested that the State Bar reread his examination, but his request was denied. The State Bar also failed to provide him an opportunity to review the notes of the graders.

Believing that his examination was graded unfairly, on June 26, 2009, Joseph filed the instant

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1 According to his complaint, Joseph is admitted to practice law in Maryland and in multiple district courts and Courts of Appeals.

2 This was the third time Joseph took the California bar exam. He failed the two prior times.

action, alleging four constitutional claims (denial of due process, denial of equal protection, abuse of discretion, and denial of privileges and immunities), breach of contract, and defamation.

The State Bar filed a demurrer[3] to Joseph's complaint.

Over Joseph's opposition,[4] the trial court sustained the State Bar's demurrer without leave to amend. Citing Business and Professions Code section 6066 and California Rules of Court, rule 9.13(d), it found that "the State Bar's examination fees and scoring is . . . encompassed within the Supreme Court's inherent power to control admissions." Thus, "if [Joseph] is entitled to any relief, he must obtain it by original petition to the California Supreme Court."

Judgment was entered, and Joseph's timely appeal ensued.

DISCUSSION

I. *Standard of Review*

"Our Supreme Court has set forth the standard of review for ruling on a demurrer dismissal as follows: 'On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The

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3 The State Bar's demurrer is not part of the appellate record.

4 Presumably Joseph filed an opposition; none is part of the appellate record.

reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed "if any one of the several grounds of demurrer is well taken. [Citations.]" [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]' [Citations.]" (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

II. *The Trial Court Properly Sustained the State Bar's Demurrer Without Leave to Amend*

The State Bar acts as the California Supreme Court's administrative assistant or adjunct in the areas of admissions and discipline of attorneys. (*Saleeby v. State Bar* (1985) 39 Cal.3d 547, 557 (*Saleeby*).) It is a constitutional entity subject to the California Supreme Court's expressly reserved primary and inherent authority over discipline and admission. (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 607.)

In other words, "the [California] Supreme Court has 'sole original jurisdiction' over the attorney admissions process." (*Smith v. State Bar* (1989) 212

Cal.App.3d 971, 976.) Because the Supreme Court "controls the admission process as part of its inherent power," that court is the only state judicial venue with jurisdiction to review Joseph's claim. (*Id.* at p. 978.) Joseph's challenge to the State Bar's procedures for certifying applicants for admission must be brought in the Supreme Court. (*Ibid.* [challenges "should be initiated in the Supreme Court under its inherent power and original jurisdiction over the admissions process"]; *Saleeby*, *supra*, 39 Cal.3d at pp. 557–558; see also Bus. & Prof. Code, § 6066 [providing that challenges to State Bar certification denials shall be "reviewed by the Supreme Court"]; Cal. Rules of Court, rule 9.13(d) [setting forth the procedure for review of admissions decisions].) Our analysis could stop here.

For the sake of completeness, we will address the remaining arguments raised in Joseph's appellate briefs. We cannot do so, however, without pointing out our distaste of his inflammatory and unsubstantiated comments that are peppered throughout those briefs. Such remarks were unnecessary and unprofessional, and an experienced attorney should know better.

Joseph argues that under article 6, section 10 of the California Constitution, the superior court has jurisdiction over his claims. Pursuant to *In re Attorney Discipline System*, *supra*, 19 Cal.4th at page 601, *Saleeby*, *supra*, 39 Cal.3d at page 559, and *Smith v. State Bar*, *supra*, 212 Cal.App.3d at pages 977 to 978, we cannot agree. Those cases confirm that the Supreme Court's jurisdiction over the attorney admissions process is not only original, but also inherent and plenary. Joseph has offered no

argument as to why this authority should be ignored.[5]

We likewise reject Joseph's contention that pursuant to Business and Professions Code section 6001, he could pursue his claims in superior court. Business and Professions Code section 6001 provides, in relevant part, that the State Bar "may sue and be sued." That statute is entirely consistent with the jurisdictional rules set forth by the Supreme Court: while the State Bar is subject to suit, any suit involving admissions matters must be brought in the Supreme Court.

In urging us to reverse the judgment, Joseph argues: "Requiring applicants to file directly with the Supreme Court, when such review is not generally available is a Catch 22, depriving applicants of due process of law." In other words, according to Joseph, the availability of review in the Supreme Court is "illusory."

We cannot adopt Joseph's unfounded, and, quite frankly, offensive, assertion that the well-established procedure for challenging admissions decisions violates the Constitution. (See *Giannini v. Real* (9th Cir. 1990) 911 F.2d 354, 357 [allowing bar applicant to see exam and petition state Supreme Court for review of applicant's denial of admission to California bar satisfies the requirements of due process].) Joseph wants his day in court. Had he

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5 Joseph similarly offers no argument or legal authority to support his assertion that "[t]he only exclusive jurisdiction of the California Supreme Court concerns the discipline of attorneys."

followed the appropriate procedure, he would have received it.[6]

Joseph relies upon *Willner v. Committee on Character* (1963) 373 U.S. 96 for the proposition that a state bar must afford an applicant a hearing before denying him admission. He claims that California has no such procedure and, therefore, his due process rights have been violated. Joseph's reliance upon *Willner* is misplaced. In *Willner*, the petitioner seeking admission to practice law had passed the New York bar examination. (*Id.* at p. 97.) The issue was a charge regarding the petitioner's character and fitness. (*Id.* at pp. 100–101.) Unlike the petitioner in *Willner*, Joseph has not passed the California bar examination, and nothing in *Willner* compels the conclusion that an applicant is entitled to a hearing regarding the grading of his bar exam.

Although not entirely clear, it appears that Joseph is contending that because the State Bar has neglected to provide him with the notes of the graders of his bar examination, his due process rights were violated.[7] The problem for Joseph is

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6 As pointed out by the State Bar, Joseph is well-aware of this procedure. After he took his third bar exam but before he received the results, Joseph filed a petition for a writ of mandate with the California Supreme Court, challenging the results of his July 2008 exam. His petition was denied.

7 Business and Professions Code section 6065 provides, in relevant part: "(a)(1) Any unsuccessful applicant for admission to practice, after he or she has taken any examination and within four months after the results thereof have been declared, has the right to inspect his or her examination papers at the office of the examining committee located nearest to the place at which the applicant took the

that this theory is not pled in his complaint. The first cause of action, titled "Denial of Due Process of Law," alleges that the State Bar's "failure . . . to provide a system for review of the grading of bar examinations constitutes a deprivation of property without due process of law in violation of the California and United States Constitutions." The complaint further alleges that "[i]n order to preserve and protect [Joseph's] property rights, the bar examination should have been graded and marked with comments concerning errors and omissions" and the State Bar "should have a procedure for review of grading and an appeal process." Nowhere does Joseph allege that he requested the graders' notes and his request was denied.

In passing, Joseph argues that because California only has one grader for each essay question, but most states have two, "he has the right to have his essays considered by more than one grader, and . . . due process requires it." Joseph offers no legal authority to support this novel proposition. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [appellant bears the burden of supporting a point with reasoned argument]; *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591 [appellant must present argument on each point made].) All *Application of Obermeyer* (Alaska 1986) 717 P.2d 382, 385 noted was that in Alaska, there are two graders for each bar exam essay. And nothing in *The Florida Bar re Williams* (Fla. 1998) 718 So.2d 773 indicates that there are two graders

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examination. [¶] (2) The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise."

for the essays of certification examination. Even if both of these states did have two graders for the essay portion of their state bar examinations, that certainly would not amount to "most" states.

Because we conclude that the superior court does not have jurisdiction, we need not reach the State Bar's argument that Joseph's claims are barred by the doctrines of res judicata and collateral estoppel.

DISPOSITION

The judgment of the trial court is affirmed. The State Bar is entitled to costs on appeal.

J. ASHMANN-GERST

We concur:

Acting P. J. DOI TODD

J. CHAVEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOEL D. JOSEPH, Case No. SCI03749

Plaintiff,

ORDER SUSTAINING DEFENDANT STATE BAR'S DEMURRER WITHOUT LEAVE TO AMEND

v.

STATE BAR OF CALIFORNIA,

The demurrer of Defendant State Bar of California came on for hearing in Department B of this court on October 27, 2009. Having reviewed the papers submitted in connection with the demurrer and considered the arguments of counsel, the Court **HEREBY ORDERS THAT**:

Defendant's request for judicial notice is granted. Evid. Code § 452(d).

The demurrer is sustained without leave to amend. CCP §430.10(a).

The court declines to rule on the special motion to strike given that the "Supreme Court has 'sole original jurisdiction' of the attorney admission process." *Smith v. State Bar* (1989), 212 Cal.App.3d 971, 976; *see In re Rose* (2000) 22 Ca1.4th 430, 443-444) and because in the absence of subject matter jurisdiction, this trial court has no power "to hear or determine [the] case" (see *Varian Medical Systems,*

Inc. v. Delfino (2005) 35 Cal.4th 180, 196.

The first basis for the demurrer listed in the operative statute is that the "court has no jurisdiction of the subject of the cause of action alleged in the pleadings." Plaintiff alleges that he took and failed the California Bar Examination in February 2008, July 2008, and February 2009, claiming that his failing score is "false." Id. ¶¶25-30. Plaintiff alleges that he requested a re-read of his examination, but was refused. Id. ¶33. Plaintiff alleges that he received his examination back with no markings or explanation of the scoring, and the State Bar later informed him that "there is no review of examination results, and no reconsideration of the scoring." *Id.* ¶36. Plaintiff alleges that "The State Bar of California has de-signed the grading of the bar examination in order to deprive many practicing lawyers, who have practiced in other states for many years, of the right to practice law in California" as evidenced by the fact that the pass rate for law students and those ineligible to take the lawyer's bar examination in July 2008 was 61.7% which contrasts with the pass rate for out of state lawyers taking the exam, which was 45% in February 2009, 43.6% in July 2008, 39.6% in February 2008, 56.1% in July 2007, and 36.8% in February 2007. Id., ¶¶39-41. Plaintiff alleges causes of action for (1) denial of due process of law for the Bar's failure to "provide a system for review of the grading of the bar examination"; (2) breach of the implied contract to score the exam fairly and accurately; (3) denial of equal protection by charging those taking the "Lawyer's Examination" $314 more

than those taking the law student examination; (4) "abuse of discretion" by "discriminating against out of state attorneys through the grading system," and (5) denial of privileges and immunities for the discriminatory grading of exams and charging of additional exam fees. *Id.*, ¶¶ 44,52,55,59,65. Plaintiff adds a sixth cause of action for defamation by publishing a pass list which presumably did not include his name and therefore declared him "unqualified to practice law in California" when he in fact did pass. *Id.*, ¶¶ 67-69. Plaintiff seeks an order requiring the State Bar of California to review plaintiff's examination and grade, or in the alternative, to "mandate that the State Bar of California admit plaintiff to the Bar of California, or that this court admit petitioner sua sponte, and that the State Bar of California be ordered to admit plaintiff to the Bar of California" in addition to $1 million in damages and an additional $1 million in exemplary Damages. *Id., 8:17-23.*

The State Bar is a public corporation created by the article in the California Constitution, that concerns the judicial branch. *In re Atty. Discipline Sys.* (1998) 19 Ca1.4th 582, 598. The Supreme Court retains the power to disbar or discipline members ofthe bar as this power existed prior to the enactment of the State Bar Act, although the Supreme Court may by rule authorize the State Bar to take any action otherwise reserved to the Supreme Court in any matter arising under this chapter or initiated by the Supreme Court; provided, that any action by the State Bar shall be reviewable by the Supreme Court pursuant to such rules as the

Supreme Court may prescribe. *Id.*, at 598-99. The bar is "a public corporation created . . . as an administrative arm of this court for the purpose of assisting in matters of admission and discipline of attorneys." *Id.*, at 599-600. Although the legislature may pass regulations "related to the admission and discipline of attorneys" such is neither exclusive nor final, since they are, "at best, but minimum standards unless the courts themselves are satisfied that such qualifications as are prescribed by legislative enactment are sufficient . . . . *In other words, the courts in the exercise of their inherent power may demand more than the legislature has required." Id.*, at 602 (emphasis in original, citation omitted). Further, "legislative enactments relating to admission to practice law are valid only to the extent they do not conflict with rules for admission adopted or approved by the judiciary. When conflict exists, the legislative enactment must give way." *Ibid.* When "the matter at issue involves minimum standards for engaging in the practice of law, *it* is *this court and not the Legislature which is [the] final policy maker." Ibid.* (emphasis in original). The "State Bar is not an entity created solely by the Legislature or within the Legislature's exclusive control, but rather is a constitutional entity subject to this court's expressly reserved, primary, inherent authority over admission and discipline." *Id.*, at 607.

The court acknowledges that in *Saleeby* v. *State Bar* (1985) 39 Cal.3d 547, 575, the Supreme Court held "that individual CSF [Client Security Fund (Bus. & Prof. Code, § 6140.5)] 7 decisions in the future may be reviewed by mandamus (Code Civ. Proc., § 1094.5) in the superior courts in the first in-

stance because such decisions are not an integral part of this court's regulatory jurisdiction over the bar." The instant case, however, does not deal with Client Security Fund reimbursements. This is plaintiffs complaint that the bar examination discriminates against out of state attorneys in grading and in fees, and improperly published a 12 pass list without his name on it. *See* Complaint, ¶¶ 44, 52, 55, 59, 65. It concerns a part of the Supreme Court's regulatory jurisdiction over admission and discipline of bar members. *See In re 14 Atty. Discipline Sys.*, 19 Ca1.4th at 607; *cf Saleeby,* 39 Ca1.3d at 575 (unlike the admissions process, the CSF was created at the State Bar's request, not by the Supreme Court under its inherent power to control admissions and discipline); *see also Smith* v. *State Bar* (1989) 212 Cal.App.3d 971, 978 ("admission fee challenges should be initiated in the Supreme Court under 18 its inherent power and original jurisdiction over the admissions process" · thus, "Smith's action 19 properly was dismissed because his challenge to the State Bar's admissions fees policies should 20 have been by original petition to the Supreme Court").

It is not too far a stretch to apply the foregoing to find that the State Bar's examination fees and scoring is also encompassed within the Supreme Court's inherent power to control admissions. Indeed, "[a]ny person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court." Bus. & Prof.

Code § 6066.

27 CRC, rule 9. 13 (d) provides:

> (d) Review of other decisions A petition to the Supreme Court to review any other decision of the State Bar Court or action of the Board of Governors of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of the State Bar Act, or of the chief executive officer of the State Bar or the designee of the chief executive officer authorized to make a determination under article 10 of the State Bar Act or these rules of court, must be filed within 60 days after written notice of the action complained of is mailed to the petitioner and to his or her counsel of record, if any, at their respective addresses under section 6002.1. Within 15 days after service of the petition, the State Bar may serve and file an answer and brief. Within 5 days after service of the answer and brief, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar, within 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after service of the supplemental brief, the petitioner may file a reply brief.

The Supreme Court has held that challenges to the admission process "should be initiated in the Supreme Court under its inherent power and original jurisdiction over the admission process and affirmed a dismissal of an action because the challenge to the State's Bar's admissions fees policies should have been by original petition to the Supreme Court. *Smith*, 212 Cal.App.3d at 978. Indeed, with regard to claims seeking review of the State Bar's decision not to certify someone to practice law by the Committee of Bar Examiners, "the California Supreme Court exercises original jurisdiction and is not restricted to the limited review made by an appellate court"—indeed, the "final determination . . . rests with [the Supreme C]ourt, and its powers in that regard are plenary and its judgment conclusive." *In re Rose* (2000) 22 Ca1.4th 430,443-444. Under the foregoing authorities, if plaintiff is entitled to any relief, he must obtain it by original petition to the California Supreme Court. The demurrer is sustained to the entire complaint without leave to amend. CCP § 430.10(a).

IT IS SO ORDERED.
/s/ Norman P. Tarle
JUDGE OF THE SUPERIOR COURT
Dated: October 27, 2009